

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7005

IN THE MATTER OF:

Served January 21, 2003

ZOHERY TOURS INTERNATIONAL, INC.,)	Case No. MP-2002-46
WMATC No. 362, Investigation of)	
Violation of Seating Capacity)	
Restriction and Commission)	
Regulations Governing Vehicle)	
Markings and Leases and Advertising)	

This matter is before the Commission to: (1) consider revoking Certificate No. 362 and assessing a civil forfeiture against respondent for knowingly and willfully violating the 15-person vehicle seating capacity restriction in Certificate No. 362; and (2) consider respondent's request filed November 27, 2002, for return of one-half of the \$500 forfeiture assessed in this proceeding in Order No. 6911, served November 18, 2002.

I. UNAUTHORIZED OPERATIONS

This investigation was initiated on June 21, 2002, in Order No. 6710 to determine, among other things, whether respondent knowingly and willfully violated the seating capacity restriction in Certificate No. 362. In that regard, Order No. 6710 directed respondent to produce for inspection within thirty days its vehicles and any and all records and documents within its possession, custody or control relating to operations in the Metropolitan District from July 1, 2001, to June 21, 2002. The order also directed respondent to bring its advertising into compliance with Commission regulations and refrain from, and/or cease and desist from, transporting passengers for hire between points in the Metropolitan District in vehicles seating more than 15 persons, including the driver.

Respondent produced two motorcoaches on July 19, 2002, and a minibus three days later. The markings displayed on the three buses declared that each was "OPERATED BY" "ZOHERY TOURS" under "WMATC 362" or "WMATC NO. 362." Respondent's USDOT number, 997972, was displayed on one of the motorcoaches. The seating capacity of each vehicle exceeded the 15-person restriction in Certificate No. 362. A printout from respondent's website filed by respondent on July 22, 2002, displayed hourly rates for 29-person and 49-person tours as of July 20, 2002.

Consequently, in Order No. 6798, served September 3, 2002, the Commission suspended Certificate No. 362 and directed respondent to: (1) immediately cease advertising services, and rates for services,

between points in the Metropolitan District that are not lawfully described in a tariff on file with the Commission; and (2) immediately remove "WMATC No. 362" from, and cease and desist operating in the Metropolitan District, vehicles seating more than 15 persons, including the driver. The order further directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent for, among other things, advertising unlawful service in knowing and willful violation of Regulation No. 63-04 and for operating the three buses in knowing and willful violation of the 15-person seating capacity restriction in Certificate No. 362.

Respondent subsequently filed a new tariff on September 9, 2002, consisting of a same-day printout of services and rates displayed on respondent's website, with hourly rates for 29-person and 49-person tours omitted. Respondent also produced the three buses for inspection on September 12 and 13, 2002. "WMATC 362" and "WMATC NO. 362" had been removed. Respondent further filed a statement on September 27, 2002, assuring the Commission that respondent would "not operate buses with the capacity of 16 passengers or more within the Washington Metropolitan Area." It thus appeared that respondent had ceased operating the buses in our jurisdiction. The record was not clear, however, as to the number of days respondent had operated the buses in our jurisdiction in the past, and an October 23, 2002, printout from respondent's website showed respondent was still advertising hourly rates for 29-person and 49-person tours, which raised the possibility that respondent's president had continued operating the buses on his own. Accordingly, in Order No. 6911, served November 18, 2002, the Commission modified the investigation period to run from August 14, 2001, through November 18, 2002, and directed respondent and its president to produce additional documents sufficient to complete the record.

Daily guide manifests produced by respondent and its president on December 17, 2002, establish that the three buses inspected in July, and one other apparently acquired by respondent's president this past August, were used to conduct group tours in the Metropolitan District on eighty-three occasions from August 20, 2001, through September 30, 2002. According to the manifests, the buses were operated by "ZOHERY TOURS." Insurance records show that Ali Zohery, dba Zohery Tours, obtained a liability insurance policy covering the original three buses effective August 14, 2001, and a trade name certificate shows Mr. Zohery registered "Zohery Tours" as a trade name with the District of Columbia Department of Consumer and Regulatory Affairs effective July 29, 2002. This would seem to support a finding that Mr. Zohery operated the buses as a sole proprietor. A preponderance of evidence, however, establishes that respondent operated the buses throughout the inspection period, at least to the extent reflected in the guide manifests.

First, the evidence shows respondent also called itself "Zohery Tours." Each of respondent's three vans inspected in May 2002 was marked "OPERATED BY" "ZOHERY TOURS." The numerous printouts from

respondent's website introduced into the record by staff and respondent refer to respondent in various places simply as "ZOHERY TOURS," including the September 9, 2002, printout filed that day by respondent as its general tariff and a November 21, 2002, printout filed that day by respondent to demonstrate compliance with Commission Order No. 6911.

Second, the 2001 federal income tax return for respondent shows respondent reported \$332,316 in revenue from tour services that year. From that, respondent deducted the following pertinent expenses: \$39,916 for repairs and maintenance; \$11,760 for bus depreciation; \$17,427 for advertising; \$28,162 for insurance; \$99,626 for tour guide service; and \$27,162 for van bus lease. Mr. Zohery's self-employed federal income tax return for 2001, on the other hand, reported only the \$4,120 personal service income Mr. Zohery received from respondent and which respondent deducted as compensation of a corporate officer. Mr. Zohery claimed no deduction for expenses.

Finally, Mr. Zohery states that all cash revenue from motorcoach and minibus operations in the Washington Metropolitan Area Transit District, as reflected in the tour guide daily manifests submitted December 17, 2002, was deposited into the business checking account of Zohery Tours International, Inc., and that all such credit card revenue was deposited into the credit sales account of Zohery Tours International, Inc. No such cash or credit card revenue was deposited into Mr. Zohery's personal checking account. Respondent's and Mr. Zohery's banks statements and income tax returns corroborate his testimony on this issue.

We therefore find that respondent transported passengers for hire in the aforementioned buses between points in the Metropolitan District on eighty-three occasions from August 20, 2001, through September 30, 2002, thereby violating the 15-person vehicle seating capacity restriction in Certificate No. 362.¹

The Commission, after notice and hearing, may suspend or revoke all or part of any certificate of authority for willful failure to comply with a provision of the Compact, an order, rule, or regulation of the Commission, or a term, condition, or limitation of a certificate of authority.²

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and

¹ See In re D.C. Transit Sys., Inc., No. 320, Order No. 1713 (June 22, 1977) (entity that collected and retained passenger revenue and incurred vehicle operating expenses deemed carrier).

² Compact, tit. II, art. XI, § 10(c).

not more than \$5,000 for any subsequent violation.³ Each day of the violation constitutes a separate violation.⁴

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁵ The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by careless disregard whether or not one has the right so to act.⁶ Employee negligence is no defense.⁷

We find that respondent has failed to show cause why a civil forfeiture should not be assessed for knowing and willful violation of the 15-person vehicle seating capacity restriction in Certificate No. 362. Not only has respondent not offered any explanation or excuse for operating the buses in our jurisdiction in the first instance, respondent persisted in these unlawful operations after being ordered to stop on June 21, 2002, and again on September 3, 2002. Indeed, most of the trips occurred in August and September 2002. To make matters worse, respondent continued operating the buses between points in the Metropolitan District after assuring the Commission on September 27, 2002, that it would cease such activity. For the same reasons, we find that respondent has failed to show cause why Certificate No. 362 should not be revoked.⁸ Accordingly, we shall assess a forfeiture of \$250 per day⁹ for eighty-three days, or \$20,750, and revoke Certificate No. 362.

II. MOTION FOR PARTIAL RETURN OF FORFEITURE

The Commission assessed a \$500 civil forfeiture against respondent in Order No. 6911, \$250 for knowingly and willfully violating Commission Regulation No. 63 and \$250 for knowingly and willfully violating Order No. 6710. Respondent requests that we "remove" the \$250 forfeiture assessed for violating Commission Regulation No. 63, which respondent paid on December 17, 2002.

³ Compact, tit. II, art. XIII, § 6(f)(i).

⁴ Compact, tit. II, art. XIII, § 6(f)(ii).

⁵ In re Washington Exec. Sedan, Inc., & Global Express Limo. Serv., Inc., No. MP-02-03, Order No. 6772 (Aug. 13, 2002).

⁶ Id.; In re All-Star Presidential, LLC, & Presidential Coach Co., & Presidential Limo. Serv., Inc., No. MP-95-82, Order No. 4961 (Oct. 29, 1996).

⁷ Order No. 6772.

⁸ See Air Couriers Int'l Ground Transp. Servs., Inc., t/a Passenger Express v. Madison Limo. Serv., Inc., No. FC-90-02, Order No. 3810 (Aug. 30, 1991) (certificate revoked where carrier continued to exceed authority in face of cease and desist order); In re American Coach Lines, Inc., No. MP-87-08, Order No. 3222 (Aug. 25, 1988) (same).

⁹ See Order No. 6772 (civil forfeiture of \$250 per day assessed for operating without authority).

Regulation No. 63-04 provides that no carrier "regulated by the Commission or subject to such regulation shall advertise or hold itself out to perform transportation or transportation-related services within the Metropolitan District unless such transportation or transportation-related services are authorized by the Commission."

Prior to and during the course of this investigation, the Commission discovered that respondent was advertising services on its website that respondent was not authorized to provide because the rates for those services were not lawfully described in a tariff on file with the Commission, including rates for service in vehicles with seating capacities exceeding the 15-person restriction in Certificate No. 362.

Respondent was ordered to bring its website advertising into compliance with Regulation No. 63 in Order No. 6710 and again in Order No. 6798, served September 3, 2002. As of October 23, 2002, respondent's website still displayed an hourly tour rate for up to 29 persons and an hourly tour rate for up to 49 persons. These rates were available for sightseeing in the District of Columbia, Maryland and Virginia. Accordingly, the Commission found that respondent failed to comply with the requirement in Order No. 6798 that respondent immediately cease advertising services, and rates for services, between points in the Metropolitan District that are not lawfully described in a tariff on file with the Commission.

Commission Rule No. 15-01 provides that "[a] timely motion may be filed for any relief or action of the Commission for which no other pleading is available under these rules," and further that "[m]otions shall set forth the ruling or relief sought and state the grounds therefor and the statutory or other authority relied upon." Respondent states as grounds for returning the \$250 that its website advertising is now in compliance with Regulation No. 63.

We find the asserted grounds insufficient for granting the requested relief. It was not until the Commission levied the forfeiture that respondent ceased advertising service for 29-person and 49-person groups. Moreover, respondent continued operating the 27-passenger minibus and 49-passenger motorcoaches as late as September 30, 2002, despite respondent being twice ordered to cease operating such vehicles in the Metropolitan District, and notwithstanding respondent's assurance to the Commission submitted September 27, 2002, that it would "not operate buses with the capacity of 16 passengers or more within the Washington Metropolitan Area."

THEREFORE, IT IS ORDERED:

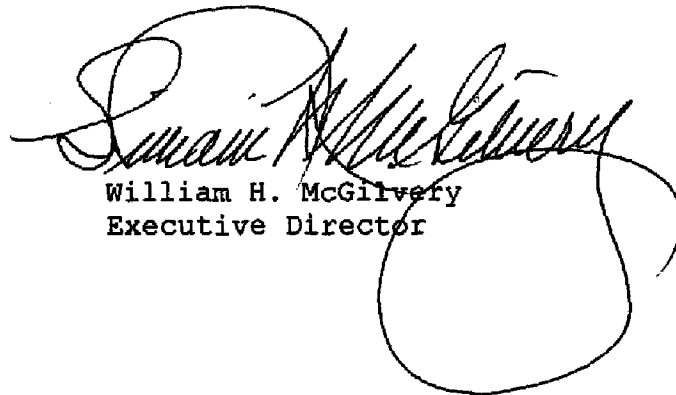
1. That the request for a partial return of the \$500 forfeiture assessed in Order No. 6911 is denied.

2. That pursuant to Article XI, Section 10(c), of the Compact, Certificate No. 362 is hereby revoked for respondent's willful failure to comply with the 15-person vehicle seating capacity restriction in Certificate No. 362.

3. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$20,750 for knowingly and willfully violating the 15-person vehicle seating capacity restriction in Certificate No. 362.

4. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of twenty thousand seven hundred fifty dollars (\$20,750).

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, MILLER, AND MCDONALD:



William H. McGilvery
Executive Director